S. HRG. 98-411

DEEPWATER PORT ACT AMENDMENTS OF 1983

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1546

TO AMEND THE DEEPWATER PORT ACT OF 1974, AND FOR OTHER PURPOSES

OCTOBER 27, 1983

Serial No. 98-40

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

27-609 O WASHINGTON : 1983

S261-57

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

BOB PACKWOOD, Oregon, *Chairman*

BARRY GOLDWATER, Arizona	ERNEST F. HOLLINGS, South Carolina
JOHN C. DANFORTH, Missouri	RUSSELL B. LONG, Louisiana
NANCY LANDON KASSEBAUM, Kansas	DANIEL K. INOUYE, Hawaii
LARRY PRESSLER, South Dakota	WENDELL H. FORD, Kentucky
SLADE GORTON, Washington	DONALD W. RIEGLE, JR., Michigan
TED STEVENS, Alaska	J. JAMES EXON, Nebraska
BOB KASTEN, Wisconsin	HOWELL HEFLIN, Alabama
PAUL S. TRIBLE, JR., Virginia	FRANK R. LAUTENBERG, New Jersey

GERALD J. KOVACH, *Chief Counsel*
RALPH B. EVERETT, *Minority Chief Counsel*

SUBCOMMITTEE ON MERCHANT MARINE

TED STEVENS, Alaska, *Chairman*

SLADE GORTON, Washington	DANIEL K. INOUYE, Hawaii
BOB KASTEN, Wisconsin	RUSSELL B. LONG, Louisiana
PAUL S. TRIBLE, JR., Virginia	HOWELL HEFLIN, Alabama

CONTENTS

	Page
Opening statement by Senator Stevens	1
Text of S. 1546	5

LIST OF WITNESSES

Canny, Joseph F., Deputy Director for Environment Policy, Department of Transportation, accompanied by Frederick Presley, Office of the Secretary; and Stephen D. Jackson, and Frank A. Martin, Jr., U.S. Coast Guard	13
Prepared statement	16
de Gravelles, N. R. executive director, Louisiana Offshore Terminal Authority, accompanied by James C. Webb, assistant executive director	21
Prepared statement	22
Read, William B., president, Louisiana Offshore Oil Port, Inc., accompanied by Thomas P. James, general counsel; and Gordon Arbuckle, Washington legal counsel	25
Prepared statement	27
Answers to questions of the committee	30

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Johnston, Hon. Bennett, U.S. Senator from Louisian, statement	2
Breaux, Hon. John, U.S. Representative from Louisiana, statement	3

DEEPWATER PORT ACT AMENDMENTS OF 1983

THURSDAY, OCTOBER 27, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:58 p.m., in room SR-253, Russell Senate Office Building, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Peter Friedmann and David Dye, staff counsels; and James Drewry, minority staff counsel.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. Let me apologize for the delay and the inconvenience. I am chairman of the Defense Appropriations Subcommittee, and we had to complete our schedule for today's consideration of amendments in the Defense Appropriations Committee before we could start this hearing.

This hearing was previously rescheduled from this morning to 2 p.m. today because of another conflict with the Defense Appropriations Subcommittee. I know that it has been an inconvenient day for all concerned, and I do offer my apologies to everyone for the delay.

This is a hearing on S. 1546. In 1974, Congress passed legislation to license and regulate deepwater ports. At that time, we anticipated that several of these offshore facilities would be built because of their cost advantage in off-loading large oil tankers, and because they are inherently safer than congested waterways and coastal ports.

As we all know, the intervening years have brought about substantial changes in the international oil market. Demand for imported oil dropped dramatically and far fewer supertankers are now calling at U.S. ports. As a result, only one U.S. deepwater port has been built, the Louisiana Offshore Oil Port, known as LOOP.

When the Deepwater Port Act passed in 1974, Congress thought that these facilities would possibly dominate other transportation modes and, therefore, decided to closely regulate deepwater ports in essentially the same way as public utilities with captive markets. Subsequent events have called these assumptions into question. LOOP now operates in a very competitive environment, but it is regulated as though it were a monopoly. We are here today to

inquire if it is now appropriate to adjust the act in light of these realities.

S. 1546, which is before this subcommittee, would make a number of changes to the act, including streamlining the licensing process, regulating rates, changing the oilspill liability requirements, and changing the method of asserting legal jurisdiction over foreign vessels using a deepwater port.

We will print in the record at this point the statements of the distinguished Senator from Louisiana, Senator Johnston, the statement of any member of the committee, and the statement of Congressman John Breaux of Louisiana, as I understand it, all of whom were here when I could not be here.

[The statements and bill as designated follow:]

STATEMENT OF HON. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

I appreciate this opportunity to testify in regard to S. 1546, a bill to amend the Deepwater Port Act of 1974, which I co-sponsored with my colleague from the State of Louisiana, Senator Long.

The Louisiana Offshore Oil Port (more often referred to as "LOOP") is located off Louisiana's coast and is connected by pipeline to an underground storage terminal located 28 miles inland in Galliano, Louisiana. From the storage terminal, oil is sent to refineries in Louisiana, Texas and throughout the midwestern United States. LOOP is the only facility licensed and operating under the Deepwater Port Act of 1974 and, in view of changes in import and oil transportation patterns which have occurred since passage of that Act, LOOP seems likely to be the only Deepwater Port facility which will ever be licensed and constructed.

When Congress enacted the Deepwater Port Act nearly ten years ago, it was widely thought that the demand for offshore Deepwater Ports and their cost advantages would be so substantial that other transportation modes, such as smaller tankers, lightering and transshipment, would be unable to compete and the Deepwater Ports would therefore achieve something approaching a monopoly position. For that reason, the Deepwater Port Act provided for stringent economic regulation to ensure that there would be no abuse of the Ports' expected competitive power.

Now, in 1983, the actual situation is almost the opposite of that which was theorized when we passed the Deepwater Port Act. Since imports have radically declined, the expected demand level for Deepwater Port services has never been reached. Since the reduced level of imports is being brought in in small conventional tankers rather than the supertankers we expected in 1974, the major cost advantages which were projected for Deepwater Ports have never materialized. Only one Deepwater Port has been or is likely to be built and the capacity of that facility is substantially under-utilized because the Port, under present conditions, is not competing effectively with available alternative oil transportation systems. To date, the Port has fallen short of recovering its annual operating costs (excluding depreciation) by nearly $40 million per year.

Continuation of the economic regulatory scheme provided by the Deepwater Port Act would continue to prevent the Deepwater Port from effectively competing for those oil cargoes which are being brought into the country and would impose a threat to the facility's survival.

S. 1546, as introduced, would not provide a subsidy or any other competitive advantage to any Deepwater Port. It would simply remove existing impediments and enable the Port to compete on an equal footing.

More specifically, the bill would

First—for so long as the Deepwater Port continues to be subject to effective competition from alternative competition modes, suspend economic rate regulation by the Federal Energy Regulatory Commission, thus providing LOOP needed flexibility to establish its rates and charges based on market conditions and competition.

Second—suspend collection of the two-cent-per-barrel fee, collected on oil shipped through the Deepwater Port, to fund the Deepwater Port Liability Fund, thereby removing a discriminatory and unnecessary impediment to use of the Port rather than alternative transportation systems.

Third—repeal the requirement in Section 19(c) of the Act for specific bilateral agreements between the United States and other nations whose vessels utilize a

Deepwater Port, thus removing a substantial constraint on Port access which has become obsolete due to developments in international law since 1974; and

Fourth—streamline and simplify procedures for amendment, transfer, renewal and extension of Deepwater Port licenses.

All of these provisions, in my opinion, will reduce regulatory burdens on the Deepwater Port and curtail the need for expenditure of unnecessary and duplicative effort by the cognizant administrative agencies without any detriment to the public interest or adverse impact on consumers of oil products. I strongly urge enactment of legislation to achieve these objectives.

In closing, let me point out that an identical bill, H.R. 2353, was introduced in the House of Representatives by the entire Louisiana delegation and was reported favorably by the House Merchant Marine Committee on September 22. H.R. 2353, as reported, incorporates a number of simplifying and clarifying amendments which are completely compatible with the objectives of S. 1546, as introduced. The Committee may wish to take the provisions of H.R. 2353 as reported by the House Merchant Marine Committee into account in its consideration of this bill.

STATEMENT OF HON. JOHN BREAUX, U.S. REPRESENTATIVE FROM LOUISIANA

Mr. Chairman, thank you and the subcommittee for this opportunity to testify today on S. 1546, proposed amendments to the "Deepwater Port Act of 1974." I join with our two Senators, Sen. Russell Long and Sen. J. Bennett Johnston, in supporting legislation to amend some provisions of the 1974 act. I would urge your prompt favorable consideration and passage of amending language. It is my hope that complete consideration of the legislation will be accomplished by both Houses of Congress by the time we adjourn for this session.

The House bill, H.R. 2353, introduced by me and cosponsored by all the members of Louisiana's House delegation, has been amended and approved, unanimously, by the House Merchant Marine Committee. Issuance of the committee's report is expected at any time. Only consideration by the House Public Works Committee remains.

Though there are some differences in the House version, as amended, and the current Senate bill, the basic objective and purpose is the same for each. Certain provisions of the original authorizing statute would be modified, or repealed, in order to allow an offshore deepwater port to operate in a freer, more competitive environment and be more responsive to the marketplace. The proposed changes would make the 1974 act more contemporary by establishing a framework of Government regulation and marketplace competition within which an offshore deepwater port may operate. This will help to provide a workable, effective regime for oversight and operation of offshore deepwater ports.

Almost ten years ago, Congress legislated a unique proposition for the United States: authorization of the licensing, construction and operation of an offshore deepwater port facility, a commercial enterprise located in waters off the United States' coast. This was landmark legislation. Historically, the first offshore deepwater port has been licensed and constructed. Operationally, it came on line for business in 1981.

The first and only such facility, known as the Louisiana offshore oil port, or LOOP, is located about 20 miles off Louisiana's coast in about 100 feet of water. The facility takes in only crude oil and pumps it to onshore storage sites. From there, the oil is pumped again in crude form to pipelines for distribution in Louisiana, Texas, and the Midwest.

Since enactment of the original statute, changes have occurred in the Nation's energy situation, its import requirements, and its sources of supply. These developments have affected the deepwater port's ability to compete and operate successfully for crude oil transportation. Our proposed amendments would allow such a facility to compete and operate more similar to its competitors, such as onshore ports and lightering, lightening, and transshipment operations.

Important to note is key regulations remain in effect to protect against unfair, discriminatory practices. Authority to suspend or revoke a license continues. Environmental safeguards are retained. Enforcement and oversight by the Secretary of Transportation, the Attorney General, and the Federal Energy Regulatory Commission continues.

At this time, I would like to review with the subcommittee the provisions of H.R. 2353, as amended and adopted by the House Merchant Marine Committee on September 22. These provisions could be incorporated into the Senate bill and I would

hope the subcommittee would favorably consider doing so. The four major sections of the bill are as follows:

1. LICENSING

A more simplified procedure is proposed for the transfer, amendment or renewal of an offshore deepwater port's license. The current act's procedure for application for ownership, construction, and operation of such a facility would remain in effect. For transfer, amendment, or renewal of a license, the licensee would be permitted to petition such, as long as the action is consistent with the findings made at the time of license issuance. Also, licenses issued under the act would remain in effect unless suspended, revoked or surrendered.

2. ECONOMIC DEREGULATION

Under this key provision, an offshore deepwater port would be required to operate as a common carrier and to provide non-discriminatory service, but would be permitted to set its rates based on market conditions and competition, as long as there existed effective competition from alternative modes of transportation. Noncompliance with these requirements could lead to FERC proceedings or Attorney General enforcement, as well as suspension or revocation of the license by the Secretary of Transportation, as now required by the current law.

3. FEE SUSPENSION AND ABROGATION

Proposed is suspension of the 2¢ per barrel fee imposed for deposit into the deepwater port liability fund. The fee has rendered the deepwater port uncompetitive and affects its economic viability. Fee collections for the liability fund would be capped at the level deposited in the fund at the time of enactment. Liability provisions for a deepwater port, set in the current law at $50 million, and for vessel owners and operators, set at $20 million, are continued. Important to note regarding liability is the license requirement for loop that it must carry, and it does so, a $150 million insurance policy as proof of financial responsibility. LOOP is insured, therefore, as required by its license conditions and the act. Use of this insurance in the case of oil spills is carried out before any Federal funds are involved. With regard to vessel owners and operators, joint and several liability is required. Every effort is being made to ensure that strong liability provisions and protections are afforded as a result of the amending legislation and in the 1974 act.

4. RELATIONSHIP TO OTHER LAWS

Repeal of the required bilateral agreement for use of an offshore deepwater port by a foreign flag ship is proposed. In its place would be established a consent regime, which would subject a foreign flag vessel calling at or using such an offshore facility to the exercise of jurisdiction by the United States. This is the same jurisdiction to which vessels consent when calling at United States coastal ports. It is consistent with customary international law as codified in the recently concluded United Nations Convention on Law of the Sea and the unilateral declaration by the President on March 10, 1983, of an exclusive economic zone. The act now limits an offshore deepwater port's throughput only to thoe foreign flag ships whose flag state has entered into a bilateral agreement with the United States, thereby restricting its ability to compete and affecting its economic viability. The proposed change would permit a more competitive opportunity for an offshore deepwater port.

Mr. Chairman, the proposed legislative amendments to the 1974 act would affect only some of its provisions. The House and Senate bills seek the same goal, that is, permitting an offshore deepwater port to survive economically because there exists a more competitive environment in which to operate.

Mr. Chairman, thank you and the subcommittee for allowing me to testify today on behalf of the legislation.

II

98TH CONGRESS
1ST SESSION

S. 1546

To amend the Deepwater Port Act of 1974, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 1983

Mr. JOHNSTON (for himself and Mr. LONG) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Deepwater Port Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Deepwater Port Act Amendments of 1983".

AMENDMENT OF LICENSE

SECTION 1. (a) Section 3(4) of the Deepwater Port Act of 1974 is amended to read as follows:

27-609 O—83——2

"(4) 'application' means any application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;".

(b) Section 4(b) of the Deepwater Port Act of 1974 is amended to read as follows:

"(b) The Secretary is authorized, upon application and in accordance with the provisions of this Act, to issue a license for the ownership, construction, and operation of a deepwater port.".

(c) Section 4(f) of the Deepwater Port Act of 1974 is amended to read as follows:

"(f) Upon petition of the licensee, a license issued under this Act may be transferred after reasonable public notice and an opportunity to comment, if the Secretary determines that such transfer is not inconsistent with the findings made under subsection (c) of this section at the time the license was issued.".

(d) Section 4 of the Deepwater Port Act of 1974 is amended by redesignating subsections (g) and (h) (and all references thereto) as subsections (h) and (i), respectively, and by inserting after subsection (f) the following new subsection:

"(g) Upon petition of the licensee, a license issued under this Act may be amended after reasonable public notice and an opportunity to comment, if the Secretary determines that the proposed amendment is not inconsistent with the findings

made under subsection (c) of this section at the time the license was issued.".

UNIFORM LICENSE CONDITIONS

SEC. 2. Section 4(c) of the Deepwater Port Act of 1974 is amended by adding at the end thereof the following new sentence: "Licenses issued pursuant to this Act shall be uniform insofar as is practicable. If conditions or provisions materially differ between licenses, the holder of any license may apply to the Secretary to amend its license to achieve uniformity, and the Secretary shall grant such amendment unless he finds that the granting of such amendment would be inconsistent with the findings made pursuant to this subsection at the time the license was issued.".

LICENSE TERM

SEC. 3. Section 4(i) of the Deepwater Port Act of 1974 (as redesignated by section 1(d) of this Act) is amended to read as follows:

"(i) Licenses issued under this Act shall remain in effect until revoked by the Secretary pursuant to the provisions of this Act or until surrendered by the licensee.".

REGULATORY REVIEW

SEC. 4. Section 5(a) of the Deepwater Port Act of 1974 is amended by inserting "(1)" after "(a)" and by adding at the end thereof the following new paragraph:

"(2) Upon petition of any licensee, the Secretary shall review any regulation or any provision or condition of any license issued pursuant to this Act to determine if such regulation, provision, or condition is reasonably cost-effective and necessary to meet the objectives of this Act. Unless he determines that such regulation, provision, or condition is reasonably cost-effective and is necessary to meet the objectives of this Act, he shall rescind or revise the regulation, provision, or condition in order to correct these deficiencies. The Secretary shall include a summary of any action taken pursuant to this subsection in the annual report to Congress as required by section 20 of this Act.".

RATES AND DISCRIMINATION

SEC. 5. Section 8 of the Deepwater Port Act of 1974 is amended to read as follows:

"SEC. 8. (a) A licensee under this Act shall operate as a common carrier and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. The level of any rate, fare, or charge set by a licensee of a deepwater port for transportation, storage, and other services may be based on competition, market conditions, and the ability to maintain the economic viability of such port. Any rate, fare, or charge so set shall be deemed just, reasonable, and nondiscriminatory.

"(b) Whenever the Secretary has reason to believe that a licensee is not operating as a common carrier in compliance with subsection (a) of this section, the Secretary may commence a proceeding pursuant to section 554 of title 5, United States Code, and shall order such remedial action, if any, as may be necessary. The Secretary may proceed as provided in section 12 of this Act to suspend or terminate the license of any person determined to be in violation of subsection (a) of this section. The Secretary may also request the Attorney General to take appropriate steps to enforce subsection (a) of this section.".

INSURANCE AND LIABILITY LIMITS

SEC. 6. (a)(1) Section 18(f) of the Deepwater Port Act of 1974 is repealed. All assets of the Deepwater Port Liability Fund, subject to the requirements of paragraph (2) of this subsection, shall be promptly paid to the State deepwater port regulatory agency of the adjacent coastal State which is nearest to the deepwater port and related facilities where such fees were initially collected. Such fees shall be used by such agency in carrying out its deepwater port program.

(2) Within ninety days after the date of enactment of this Act, the Secretary shall determine the total amount of the claims outstanding against the Deepwater Port Liability Fund and shall withhold from the payment in paragraph (1) of this subsection a sufficient reserve to pay these claims. In

the event that the total amount of the actual claims paid is less than the amount of the reserve, the difference shall be paid promptly to the responsible State regulatory agency.

(3) Section 18(h) of the Deepwater Port Act of 1974 is amended by striking out paragraph (3) and by redesignating paragraphs (4) and (5) (and all references thereto) as paragraphs (3) and (4), respectively.

(4) Section 18(c)(3) of the Deepwater Port Act of 1974 is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section" and inserting in lieu thereof "revolving fund established pursuant to section 311(k) of the Federal Water Pollution Control Act".

(5) Section 18(m) of the Deepwater Port Act of 1974 is amended by striking out "and" at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) 'Fund' means the revolving fund established pursuant to section 311(k) of the Federal Water Pollution Control Act.".

(b)(1) The first sentence of section 18(d) of the Deepwater Port Act of 1974 is amended to read as follows: "Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from the

discharge of oil from such vessel within any safety zone, except when such vessel is moored at a deepwater port.".

(2) The second sentence of section 18(g) of the Deepwater Port Act of 1974 is amended to read as follows: "In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel, the licensee, or the United States, can show that such damage was caused solely by the negligence of such party.".

(c) Section 311(k)(1) of the Federal Water Pollution Control Act is amended by striking out the period at the end of the first sentence and inserting in lieu thereof the following: "and section 18 of the Deepwater Port Act of 1974.".

JURISDICTION

SEC. 7. Section 19(c) of the Deepwater Port Act of 1974 is amended to read as follows:

"(c) Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize, a deepwater port licensed under this Act unless the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel while located within the safety zone.".

CONFORMING AMENDMENTS

SEC. 8. (a) Sections 3(12) and 4(e)(2) of the Deepwater Port Act of 1974 are amended by striking out ", transferred, or renewed" and inserting in lieu thereof "or transferred".

(b) Section 5(g) of the Deepwater Port Act of 1974 is amended by striking out ", transferred, or renewed".

(c) Section 7(a) of the Deepwater Port Act of 1974 is amended by striking out ", transfer, or renew".

(d) The first sentence of section 7(b)(1) of the Deepwater Port Act of 1974 is amended to read as follows: "Whenever any application for issuance of any license or any petition for the transfer of or amendment to any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application or petition.".

○

Senator STEVENS. We would like to proceed with the testimony of Mr. Joseph Canny, the Deputy Director for Environment Policy of the Department of Transportation. Could we proceed with Mr. Canny at this time, please.

STATEMENT OF JOSEPH F. CANNY, DEPUTY DIRECTOR FOR ENVIRONMENT POLICY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY FREDERICK PRESLEY, OFFICE OF THE SECRETARY; AND STEPHEN D. JACKSON, AND FRANK A. MARTIN, JR., U.S. COAST GUARD

Mr. CANNY. Thank you, Mr. Chairman.

We are pleased to appear before you today to discuss the proposed amendments of the Deepwater Port Act. I am accompanied by Mr. Frederick Presley, Mr. Stephen Jackson, and Mr. Frank Martin of the U.S. Coast Guard. The Office of the Secretary of Transportation and the Coast Guard share responsibility for administration of the Deepwater Port Act.

My prepared statement presents the historical background of the act, its administrative features, and the Department's detailed views on the proposed legislation. To conserve your time, I will briefly summarize our views on the bill.

Senator STEVENS. Thank you. Your statement in full will be printed in the record. I have looked at it.

Mr. CANNY. Thank you, sir.

In general, then, you will note that we support the proposed amendments. We believe that adjustments are appropriate to reflect nearly 8 years of operating experience under the act. However, we believe that a number of changes in the bill are desirable in order to protect the public interest and to insure the continued fair and equitable administration of the act.

With respect to specific provisions of the bill, we support streamlining the process for transfer or amendment of an existing license as provided in section 1. However, we would wish to retain authority for the Secretary of Transportation to take account of relevant factors which may have a bearing on this decision, such as the financial responsibility of a proposed transferee.

We believe that uniformity in license conditions may not always be possible or desirable because of differences in circumstances affecting each license. Thus, we would object to the proposal in section 2.

We endorse section 3 which would repeal license term limitations.

We question the need for the changes proposed in section 4 to current procedures governing exemptions from the requirements of the deepwater port regulations. However, we would support new procedures for amending license conditions, and we have no real objection to the other aspects of section 4.

We endorse the proposal in section 5 to curtail tariff regulations at this time. However, we believe that some economic regulatory authority should be retained in the event that economic conditions change. We would note, however, that the Department of Transportation does not have the expertise or the resources necessary to assume effective and positive tariff regulation responsibilities.

27-609 O—83——3

We oppose some changes that are proposed in section 6, specifically those changes to the deepwater port liability fund that would shift the financial burden for deepwater port liability from users to the general taxpayer; would transfer the fund's balance to adjacent coastal States; and would exempt some vessels engaged in the transfer of oil in the safety zone of a deepwater port from oilspill liability.

However, we do endorse the temporary suspension of the 2-cent per barrel fee, with provision for resumption of collection of that fee when the fund's unobligated balance would drop below a level of about $4 million. We also would support reduction of the fund ceiling from the $100 million level in the current act to the amount that would actually be available in the fund as of the date of enactment of the amendments.

With respect to section 7, we believe that we must retain the requirement for bilateral agreements for vessels calling at the port, otherwise we believe that U.S. jurisdiction over foreign-flag vessels at deepwater ports, even those ports that may be within our exclusive economic zone, may not be fully recognized by other nations, or may establish a precedent inconsistent with our overall interests. Thus, we would oppose section 7.

Mr. Chairman, time and experience have shown that the act contains some requirements that are unnecessary and burdensome. Continued implementation of those requirements would prove inimical to the viability of our only existing deepwater port.

For these reasons, we support changes in the Deepwater Port Act to simplify administrative requirements, to improve review procedures, and to suspend collection of the fee on oil shipped to the port.

Suggested changes to the proposed legislation which reflect and incorporate the views presented are attached to my prepared statement.

This concludes my prepared summary. My colleagues and I will be happy to answer any questions that you might have.

Senator STEVENS. Are you familiar with the recent changes in the House bill as proposed by the House Merchant Marine and Fisheries Committee?

Mr. CANNY. Yes, sir, I am.

Senator STEVENS. Do those changes make that bill more acceptable to the Department of Transportation?

Mr. CANNY. Yes, sir; generally, it is a more streamlined bill, and I think it addresses the problem areas in a more succinct way. It eliminates many of the concerns. There are a few concerns that we would continue to have with the House reported version, however.

The concern about retaining some form of tariff regulation in the event that economic conditions change remains a concern. The proposed solution to the problem of bilaterals is not acceptable to our international law experts. They think that we need to continue to have the bilaterals.

With respect to a couple of specific items, we also think that the provision for providing amendments for consideration of elements such as the financial responsibility of a transferee would have to be retained.

We also would like to see a provision made for extended borrowing authority for the deepwater port fund to cover expenses for cleanup. Due to a technical defect in the current legislation, we can borrow to cover damages, but we cannot borrow to cover cleanup expenses, and we would like to see that oversight corrected.

Senator STEVENS. Doesn't the Coast Guard have emergency funds for cleanup?

Mr. CANNY. We have funds, but with respect to this particular fund, as I said, we can borrow to cover damages in excess of the amount that is actually in the fund, but we can't borrow for cleanup costs.

Senator STEVENS. When vessels, particularly tankers, use coastal ports, don't they have contractual agreements similar to the bilateral requirement that you want to see imposed?

Mr. CANNY. I would like to refer that question to Mr. Presley, if I may.

Mr. PRESLEY. I think that perhaps you are referring to the question of 19(c). When vessels call at ports within the United States, it is not based upon the consent of that vessel to a jurisdiction of the United States, but rather the territorial right of the United States to exercise its laws over the vessel.

At the deepwater port, on the other hand, we are talking about an area that is on the high seas. As a solution for considering the deepwater port to be a port subject to the jurisdiction of the United States, in the same way that ports within the territory of the United States are completely subject to the jurisdiction of the United States, bilaterals were chosen as a mechanism to assure that the problem associated with the exclusive right of a flag state of a vessel be removed in order to obtain the same kind of jurisdiction over the vessels of that flag state at the deepwater port.

Senator STEVENS. Don't they just consent, when they use our ports? Isn't implied consent sufficient to deal with this matter?

What is the matter with the House bill, let's put it that way?

Mr. PRESLEY. The vessel's master and the vessel's owner may very well be able to consent to jurisdiction over themselves as to the jurisdiction of the United States. They are individuals and they have the right to do this. The problem arises with respect to the flag-state sovereign right, which is associated with the freedom of navigation on the high seas.

The freedom of navigation on the high seas includes the right of the flag state to have exclusive jurisdiction over activities which are carried out onboard that vessel while the vessel is on the high seas. This situation does not arise within the port. It does, however, arise on the high seas, and this is the purpose for which bilaterals are required in our view.

Mr. CANNY. Mr. Chairman, I would like to elaborate very briefly on that.

It is our understanding that it is the view of the Department of State that we have been attempting to resist efforts by other nations to establish implied-consent regimes in areas where our vessels might be transiting straits or otherwise having to pass through what might be considered the territorial waters of those nations. Nations have been seeking to or at least have been discussing the possibility of setting up an implied-consent regime. We have con-

sistently objected to that when other nations have proposed such efforts, and we think it would be undesirable for us to establish such a precedent. It would work against our long-term interests.

Senator STEVENS. Under the existing law, have any agreements been developed under this bilateral requirement?

Mr. CANNY. Yes, sir; we have agreements with the majority of the major shipping states. I believe that a total of about 75 percent of all the oil tanker tonnage is covered by current bilaterals.

In addition, we are working with five other nations to try to consummate bilateral agreements that would bring to more than 90 percent of the total world tanker tonnage of a size that could be served at the LOOP deep water that would be covered by the bilateral agreements.

Senator STEVENS. I think it is going to be the recommendation of this subcommittee that we process the House bill as amended by the Merchant Marine and Fisheries Committee. It is my understanding that there have been substantial changes that correct many of the concerns that have been raised by the administration.

Mr. CANNY. That is correct.

Senator STEVENS. If you have further difficulty with the House bill, I think you would be well advised to communicate with the House people as it comes to the floor of the House. With the time left in this session of this Congress, I doubt that we want to make this bill controversial. We need to address the problems of our only deepwater port.

As I said, it is going to be my suggestion to the committee that we clear the House bill when it comes here. So I would urge you to present your viewpoints once again to the House committee.

Mr. CANNY. We will be happy to do that, sir.

Senator STEVENS. Do you have anything further to submit in any way, gentlemen?

Mr. CANNY. No, sir; we will be happy to work with you and the committee staff on any elements of this that might be helpful.

Senator STEVENS. I do thank you for that, and again I apologize for the inconvenience you have all had for waiting this afternoon.

Mr. CANNY. It was no problem at all.

Senator STEVENS. Thank you very much.

Mr. CANNY. Thank you.

[The statement follows:]

STATEMENT OF JOSEPH F. CANNY, DEPUTY DIRECTOR, OFFICE OF ECONOMICS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss S. 1546, proposed legislation to amend the Deepwater Port Act of 1974. I am accompanied by Warren L. Dean from the Office of the Secretary, and Stephen D. Jackson and Frank A. Martin, Jr. from the Coast Guard. The Office of the Secretary of Transportation and the Coast Guard share responsibility for administration of the Deepwater Port Act.

My statement will touch on the historical background of the Deepwater Port Act, its administrative features, and the Department's views on the proposed legislation.

HISTORICAL BACKGROUND

Over the decade of the 1960's the United States steadily increased its imports of foreign crude petroleum. By the end of that decade very large tank ships—providing economies of scale on long trips—were becoming commonplace in the world's oil trade. The U.S., however, was unable to avail itself of these economies in its own

trade—involving savings of up to half of the ocean transportation cost—because our East and Gulf Coast ports are to shallow to accommodate these large tankers.

Forecast increases in U.S. oil consumption and the lack of deepdraft ports to accommodate large tank ships gave rise to concern about the potential for adverse effects on our Nation's economy, security and standard of living, and about possible environmental damage to our coasts resulting from greatly increased tanker traffic.

Responding to this concern, during the 92d and 93d Congresses, a number of bills pertaining to deepwater ports and other types of offshore development were introduced. By the end of 1974, our crude oil imports reached 2.8 million barrels per day, or about three times the amount in 1960, with no sign that oil consumption levels would stabilize in the foreseeable future. Congress enacted the Deepwater Port Act of 1974 and the president signed it into law on January 3, 1975.

In December 1975, two oil company consortia filed license applications with the Department to construct and operate deepwater ports off the U.S. coast in the Gulf of Mexico. In December 1976—within the 356 days allowed by the statute—licenses were offered to Louisiana Offshore Port, Inc., (LOOP) and to Seadock, Inc. LOOP accepted its license in August 1977, and the only U.S. deepwater port became operational in May 1981. Seadock, however, expressed opposition to many terms of its license, although they were virtually identical with those of the LOOP license. Following the withdrawal of its three major shareholders, Seadock was granted an extension of its license offer until April 1978 to allow time to attract new participants. After failing to form a financially viable enterprise, Seadock advised the Department that it was ceasing its activities.

In August 1978, the State of Texas, through its Texas Deepwater Port Authority (TDPA) submitted an amendment to the Seadock application for a state owned deepwater port. A license was offered to TDPA in August 1979. TDPA then attempted to obtain user throughput agreements sufficient to back the issuance of revenue bonds, to finance port construction. However, by this time, crude oil imports had declined from their historic peak level of 1978, and potential port users, wary that the demand for imported oil might weaken further, were reluctant to make long-term commitments. Thus, TDPA failed to get the necessary agreements, and in October 1980 requested an additional extension of the license offer to allow the construction of a smaller port in a different location. This request was determined to be an incomplete application for a different port, and was denied. Therefore, in November 1980, the TDPA license offer expired.

In December 1980, Texas Offshore Port, Inc. (TOP) submitted a license application for a smaller deepwater port facility located along the same pipeline route as the Seadock/TDPA projects but closer to shore off Freeport, TX. A license was offered to TOP in September 1981. Subsequently, TOP determined that it would be unable to accept the license offer within the nine month grace period because of drastically reduced oil imports and was granted an extension of the license offer, subject to certain conditions, until June 21, 1984.

As I stated earlier, LOOP began operations in May 1981. However, while its potential throughput capacity is 1.4 million barrels a day, I understand that the current throughput has fallen below what LOOP considers the economic break-even point because of the weak demand for foreign crude. Currently, crude oil imports are estimated at less than 3 million barrels per day for the United States, about the same level as in 1974. LOOP has had to make strenuous efforts to remain competitive during this period of weaker than expected demand for foreign crude and depressed tanker rates which offer shippers a cheap alternative to the large tankship/deepwater port strategy for importing oil. LOOP has lowered its tariff twice this year to be economically competitive. We understand that while throughput at LOOP has increased, it is still below the break-even point.

ADMINISTRATIVE FEATURES

As background for my discussion of the proposed legislation, I will now summarize for you the salient administrative features of the Deepwater Port Act.

Licensing Agency—The Department of Transportation is designated as the single agency for licensing the ownership, construction and operation of deepwater ports. This has been called the "one-window" concept.

Adjacent Coastal State Veto—Adjacent coastal states have the right to veto any deepwater port proposed to be licensed under the Act. An adjacent coastal state is broadly defined and includes: (1) a State which is directly connected to the port by pipeline; (2) a State located within 15 miles of the proposed port; and (3) a State which could be threatened by a possible oil spill from the port.

Procedure—A timetable of 356 days for action on a license is established involving receipt of applications, environmental impact statement preparation, hearings, final recommendations by all Federal agencies and issuance or denial of a license offer.

Environmental Review—The Secretary of Transportation, together with the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration, establishes environmental review criteria for evaluating an application to build a deepwater port. The criteria include the full range of environmental concerns associated with deepwater ports.

Antitrust Review—Among several prerequisites to the issuance of a license is the requirement for an antitrust review of the application by the Department of Justice and the Federal Trade Commission. Each agency is to give the Secretary an opinion as to whether issuance of the license would adversely affect competition, restrain trade, further monopolization or otherwise create or maintain a situation in contravention of the antitrust laws.

Common Carrier Status—Existing statutes regulating the transportation of oil in interstate commerce are specifically applicable to deepwater ports.

Navigational Safety—The Secretary prescribes procedures to ensure navigational safety at deepwater ports and adjacent waters. The Secretary also designates safety zones around deepwater ports within which no incompatible uses or activities are permitted.

Liability—Strict liability for pollution damage caused by a discharge from a deepwater port itself or from a vessel within its safety zone is prescribed. The Act allocates liability among: (1) the licensee (up to $50,000,000); (2) the owner and operator of a vessel (up to $20,000,000); and (3) a deepwater port liability fund for all other proven damages (including cleanup costs) not actually compensated by the licensee or the owner or operator. The fund is financed by a 2 cent per barrel throughput charge.

Vessel Jurisdiction—A deepwater port may not service a foreign-flag vessel until a bilateral agreement has been placed in effect providing United States jurisdiction over the foreign-flag vessel at the port.

S. 1546

I will now summarize the Department of Transportation position on S. 1546, the proposed legislation to amend the Deepwater Port Act. In general, we support the intent of the proposed amendment. We believe that some adjustments are appropriate to reflect nearly eight years of operating experience under the Act. However, we believe that a number of changes to S. 1546 are necessary in order to protect the public interest and to ensure the continued fair and equitable administration of the Act.

Section 1 of S. 1546 would simplify the procedure for transferring or amending an existing license. It would provide for basing the Secretary's decision for transferring or amending a license on the findings made during the processing of the original application.

We do not object to the intent of this proposal, particularly since certain findings made during the processing of the original application would still be valid. In the case of license transfer, we would, however, require evidence that the new applicant is financially responsible and willing to comply with all relevant laws and license conditions. In addition, we consider the existing antitrust review provisions of the Act, including discovery, to be essential to the Secretary's decision. And also, we would require that a petition for license transfer be based on current relevant information, and that review of the petition include consideration of any possible need to adjust the license, as well.

Section 2 would expand the provisions of section 4(c) of the Act to allow a licensee to seek amendment of its license to achieve parity with any other deepwater port licensee.

Section 4(c) of the Act stipulates the findings or determinations which the Secretary must make in reaching a decision to grant or deny a license. While this proposal appears to be reasonable in concept, certain factors—such as the owners' economic position and the characteristics, location and operation of the facilities—may require that conditions and provisions differ from license to license. Therefore, we oppose Section 2.

Section 3 would amend section 4(h) of the Act by removing the limitations on the license term which is now twenty years, and susequent renewal terms of ten years.

We endorse this amendment inasmuch as the current renewal process requires a burdensome procedure tantamount to a new license. Furthermore, a deepwater port facility could, with proper repair and maintenance, have an indefinite service life.

Section 4 would expand section 5(a) of the Act to require the Secretary to review and amend or rescind a regulation or license condition upon petition of a licensee unless the Secretary determines that the condition is cost-effective or necessary to achieve the purposes of the Act.

Section 5(a) of the Act authorizes the Secretary of Transportation to amend or rescind deepwater port regulations. Furthermore, the deepwater port regulations (33 CFR 148, Subpart F) set forth the procedures governing exemptions from any requirements of these regulations.

We consider the proposed change in the established procedures for review, amendment and rescission of regulations to be unnecessary and redundant. However, we would have no objection to the proposal if it were restricted to the amendment of license conditions and requirements, provided the need is demonstrated by the licensee and the amendment is not contrary to the statute.

Section 5 would amend section 8 of the Act to free the licensee from Federal Energy Regulatory Commission (FERC) regulation of its tariff and increase the regulatory powers of the Secretary of Transportation to ensure that a deepwater port provides nondiscriminatory service under its common carrier obligation.

While we are in general agreement with the intent of this section in light of present market conditions, we believe it is appropriate to retain some regulatory authority, in the event current conditions change. Since the Department of Transportation does not have the expertise or the resources necessary to assume tariff regulation responsibilities, we would prefer that the FERC make the determination to suspend tariff regulation for as long as effective competition from alternative transportation systems exists.

Section 6 would eliminate the Deepwater Port Liability Fund, transfer the Fund's balance to the adjacent coastal States, substitute the fund established by section 311(k) of the Federal Water Pollution Control Act, and remove the oil spill liability of certain vessel owners and operators.

We object to several elements of the proposed Section 6 for the following reasons:

The Deepwater Port Liability Fund is currently financed by a user fee, while the section 311(k) pollution fund is financed by general revenues. Consequently, by eliminating the Deepwater Port Liability Fund and shifting its responsibilities to the section 311(k) fund, the financial burden would also be shifted from the user, where it belongs, to the general taxpayer. We do not believe that such a shift in the financial burden would be appropriate. However, we are aware that the Senate Committee on Finance is currently considering S. 976 and the House Merchant Marine and Fisheries Committee has recently reported favorably on H.R. 3278, bills which would establish a comprehensive oil pollution compensation and liability system. That system would incorporate the Deepwater Port Liability Fund and other existing funds and would establish a uniform pollution compensation fee on all crude oil processed in the U.S. Pending action on that proposal by both Houses, we recognize that a pollution compensation imposed fee only on imported oil shipped through the deepwater port may be inequitable and discriminatory. Therefore, we would not object to an amendment to subsection 18(f)(3) of the Act to suspend the collection of the two-cent-per-barrel fee as long as the amendment is limited to only a suspension of the fee. We favor preserving the mechanism to resume collecting the fee in the event the Fund is depleted, and retaining the rest of the administration of the Fund until such time as the Fund may be supplanted by a broader user-financed fund.

The Deepwater Port Liability Fund has a current balance of about $4 million. In the event of an oil spill, the Fund would be used (1) as a direct draw by the Secretary to pay promptly for Government oil removal and cleanup costs (subsection 18(c)(3)), (2) after the owner or operator of a vessel, or the licensee of a deepwater port, exceeded its liability limit (subsections 18(d) and 18(e)), and (3) when a vessel, or a deepwater port, discharges oil but has valid defenses to liability (subsection 18(g)). However, under subsection 18(f)(3) the fund cannot borrow to pay for Government cleanup costs as these costs are direct draws from the Fund instead of claims against the Fund as specified in that subsection. If fee collection were suspended and the Fund were depleted, it would be necessary to adjust the discretionary borrowing authority to maintain the Fund at an adequate level and permit borrowing for direct cleanup expenses. This could be accomplished by a technical amendment to subsection 18(f)(3). The proposed Section 6 would not make the States responsible for either damage claims or cleanup costs resulting from a discharge of oil at a deepwater port, so we see no basis for transferring the balance in the Deepwater Port Liability Fund to the States.

We object to section 6(b)(1), which would amend section 18(d) of the Act, because it appears to exempt certain vessels operating in the deepwater port safety zone from

oil spill liability. However, that provision apparently intended to make the oil spill liability of a vessel engaged in deepwater port activities applicable only to discharge within the port safety zone. We recognize the need to clarify the effect of section 18(d) and would be pleased to work with the Committee on appropriate language.

Section 7 would repeal section 19(c) of the Act which covers bilateral agreements between the United States and other countries for U.S. jurisdiction over their vessels while calling at U.S. deepwater ports.

Each agreement under the Act has provided that the flag state recognizes the jurisdiction of the United States over vessels of its flag, and personnel on board when calling at or otherwise using deepwater ports or their safety zone. The extent of the jurisdiction is the same as that while a vessel of the flag is in a coastal port of the United States.

On March 10, 1983, the President proclaimed an Exclusive Economic Zone for the United States, within which the United States has jurisdiction with regard to the installations and structures having economic purposes, and the protection and preservation of the marine environment.

The jurisdiction with regard to vessels asserted in sections 19(a) and 19(b) of the Act is more extensive than that proclaimed by the President. Further, without bilateral agreements, the exercise of jurisdiction by the United States with regard to foreign vessels and personnel on board could give rise to dispute, based on differing interpretations of international law.

For the foregoing reasons, we believe that the requirement for bilateral agreements should be retained. Nevertheless, we recognize that the requirement for bilateral agreements has been the cause for the loss of some business at LOOP. Therefore, we intend to increase our efforts with the Department of State to conclude bilateral agreements with countries whose tankships are likely to call at LOOP.

Section 8 would provide technical revisions which are acceptable to the Department.

Suggested changes to the proposed legislation which reflect and incorporate the views I have presented are in the attached Appendix A.

In conclusion, let me summarize our position on the proposed legislation.

We do not object to streamlining the process for the transfer or amendment of an existing license. However, we want to retain authority for the Secretary of Transportation to take account of relevant factors which may have a bearing on the decision.

We believe that uniformity in license conditions may not always be possible or desirable because of differences in conditions affecting each license.

We endorse repeal of license term limitations.

We question the need for change in current procedures governing exemptions from the requirements of deepwater port regulations. However, we would support new procedures for amending license conditions.

We endorse the proposal to curtail tariff regulations at this time. However, we believe that some economic regulatory authority should be retained. The Department of Transportation does not have the expertise or resources necessary to assume tariff regulation responsibilities.

We oppose changes in the Deepwater Port Liability Fund that would shift the financial burden for the deepwater port liability from users to the general taxpayer, transfer the Fund's balance to adjacent coastal states, and exempt any vessel engaged in the transfer of oil in the safety zone of a deepwater port from oil spill liability. We endorse, however, the temporary suspension of the two-cent-per-barrel fee with the provision for its resumption when the Fund's unobligated balance drops below $4 million, at the Secretary's discretion, and reduction of the available balance in the Fund.

We believe that we should retain the requirement for bilateral agreements. Otherwise, U.S. jurisdiction over foreign-flag vessels at deepwater ports, even though these ports may be within our EEZ, may not be fully recognized by other nations, or may establish a precedent inconsistent with our overall interests.

We believe that we have been successful in administering the Deepwater Port Act because of the foresightedness of its drafters and the cooperation of the applicants and licensees. In particular, the provisions for a consolidated Federal agency permitting procedure and for a concise decision-making time-frame have worked so well that similar provisions have since been replicated in other legislation, such as the Ocean Thermal Energy Conversion Act of 1980 and various bills on deep-draft navigation improvement projects.

However, time and experience have shown that the Act contains requirements which are unnecessary or unnecessarily burdensome or both. Moreover, continued enforcement of these requirements could well prove inimical to the viability of our

only operating deepwater port which is currently operating in a world oil market and a domestic oil economy far different from that envisioned when the Act was drafted. For these reasons, we support changes in the Deepwater Port Act to simplify administrative requirements and to improve review procedures.

Mr. Chairman, that concludes my prepared statement. My colleagues and I would be happy to answer any questions you might have.

ATTACHMENT A.—AMENDMENTS TO S. 1546

On page 2, strike lines 12 through 17 and substitute the following:

"(f) The Secretary may amend or transfer a license issued under this Act if the amendment or transfer is consistent with the findings made at the time the license was issued, as modified by subsequent events, and, in the event of a transfer, the transferee meets the requirements of this Act, including the provisions of subsections (c)(1), (c)(2) and (c)(7) of this section."

On page 2, line 22, strike the word "a" and insert in lieu thereof "its."

On page 3, line 9, strike the words "apply to" and insert in lieu thereof "petition."

On page 3, lines 12 and 13, strike the words "this subsection at the time the license was issued" and insert in lieu thereof "subsection (f) of this section."

On page 4, strike lines 1 through 12 and substitute the following:

"(2) Upon petition of any licensee, the Secretary shall review any provision or condition of any license issued pursuant to this Act to determine if such provision or condition is reasonable and necessary to meet the objectives of this Act. The Secretary shall rescind or revise any provision or condition that she determines is no longer necessary or otherwise required by any Federal department or agency under this Act."

On page 4, strike lines 14 through 25, and on page 5, strike lines 1 through 11. In lieu thereof, amend section 8(a) of the Deepwater Port Act of 1974 by striking the period and inserting:

", unless the Federal Energy Regulatory Commission determines, upon application by the licensee of such deepwater port, that it is subject to effective competition from alternative oil transportation systems."

On page 5, strike lines 13 through 25, on page 6, strike lines 1 through 25, and on page 7, strike lines 1 and 2. In lieu thereof, amend subsection 18(f)(3) of the Deepwater Port Act of 1974 as follows:

1. In the third sentence delete "$100,000,000" and insert in its place "the amount in the Fund upon the date of enactment of this legislation."

2. Delete the fourth sentence and insert in its place "The Secretary may order the collection of the fee to be resumed when the unobligated balance of the Fund as reduced by the unliquidated debts to the United States Treasury is less than $4,000,000."

3. Insert after the fourth sentence, a new sentence to read as follows:

"The Fund may borrow from the United States Treasury at an interest rate determined by the Secretary of the Treasury amounts of money sufficient to maintain the available balance in the Fund at $4,000,000."

4. Amend the sixth sentence (as relocated by paragraph 3) as follows:

After the word "than" insert "the amount the Secretary determines is needed to draw upon under subsection (c)(3) of this section or".

5. Amend the eighth sentence (as relocated by paragraph 3) as follows:

After the word "needed" insert "to draw upon under subsection (c)(3) of this section or".

On page 7, strike lines 10 through 24.

Senator STEVENS. Mr. de Gravelles, executive director of the Louisiana Offshore Terminal Authority, it is very nice to see you here.

STATEMENT OF N. R. DE GRAVELLES, EXECUTIVE DIRECTOR, LOUISIANA OFFSHORE TERMINAL AUTHORITY, ACCOMPANIED BY JAMES C. WEBB, ASSISTANT EXECUTIVE DIRECTOR

Mr. DE GRAVELLES. I would like to submit my full testimony in writing here, and just read the summary, if that is agreeable with you.

Senator STEVENS. Thank you, sir, and your full statement will be printed in the record.

Mr. DE GRAVELLES. Our experience with LOOP's people during the past 5 years has indicated that they are good environmental citizens. While minor oilspills have occurred, no major problems have developed.

Our environmental monitoring started a year prior to construction, and it indicated an absence of significant adverse environmental impact. The monitoring program conducted by the Louisiana Wildlife and Fisheries Department and the Louisiana State University Center for Wetland Resources will continue for the life of the project. This monitoring program should quickly indicate environmental problems at the earliest stages. Should environmental problems occur, corrective measures will be prescribed immediately.

An excellent oilspill contingency plan has been developed for this project. Regular training exercises are conducted by LOOP personnel to assure they are adequately prepared to react to and control emergency situations.

Adequate oilspill controls and cleanup equipment have been acquired and are maintained by LOOP in strategic locations near where more significant mishaps could occur. Very little of the equipment has been needed to clean up oilspills since May 1981 when LOOP went operational.

Because of our close association and experiences with LOOP, we are supporting the proposed amendments to the Deepwater Port Act of 1974 as contained in S. 1546.

Senator STEVENS. Thank you very much, that was very succinct.

Are you familiar with the marked up version of H.R. 2353 which I referred to earlier?

Mr. DE GRAVELLES. Yes.

Senator STEVENS. Is there anything in those changes that would alter your statement here today?

Mr. DE GRAVELLES. No, sir, we are satisfied with that.

Senator STEVENS. Do you think that the proposed cap on the oilspill fund as it applies to LOOP is sufficient?

Mr. DE GRAVELLES. Yes, sir, I do.

Senator STEVENS. Thank you very much.

Do you have anything to add, Mr. Webb?

Mr. WEBB. No, sir. He covered it very adequately.

Senator STEVENS. I appreciate your concern and willingness to be here to help us make this record, gentlemen. Thank you very much.

Mr. DE GRAVELLES. Thank you.

[The statement follows:]

STATEMENT OF N. R. DE GRAVELLES, EXECUTIVE DIRECTOR, LOUISIANA OFFSHORE TERMINAL AUTHORITY, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, AND JAMES C. WEBB, ASSISTANT EXECUTIVE DIRECTOR

Recently testimony was presented on H.R. 2353, a companion bill to S. 1546. Since these bills basically accomplish the same objectives which we, in state government, believe are needed to asssit LOOP, we are, therefore, supporting the proposed legislation.

Louisiana citizens, at a time long before the 1973 oil embargo, thought that development of a project such as LOOP would be the only feasible way to import the tremendous amounts of crude oil which were being projected to supplement our diminishing domestic production. The trend in tankers necessary to transport the projected volumes of crude oil was toward supersized cargo vessels too large to enter ports in the United States. Therefore, when LOOP came into the picture, we openly

welcomed this exciting new venture; not only for its economic profitability to the State, but because it would be an environmentally safer way to import crude oil rather than bringing it up the Mississippi River.

During the time of initial planning, environmental issues were receiving an exorbitant amount of attention and weighed heavily on the enactment of laws and the promulgation of rules and regulations affecting licensing of offshore terminal facilities. Numerous safeguards were instituted, many of which are not necessary as the past two years' experience with LOOP has shown. Because LOOP personnel have been good environmental citizens and because conditions have changed, we are able to come before you and support changing the Deepwater Port Liability Fund and other provisions contained within S. 1546.

ENVIRONMENTAL MONITORING PROGRAM

An Environmental Protection Plan developed by Louisiana to meet state legislative requirements was designed to determine if adverse conditions would exceed reasonable and expected impacts. A year before construction of LOOP was initiated, the Louisiana Wildlife and Fisheries Department and the Louisiana State University, Center for Wetland Resources, began intensive monitoring programs covering vegetation, mammals, birds, fisheries, and physical parameters, such as chemicals in the water column, sediments in pipeline zones and other factors occurring both onshore and offshore.

During the latter period of construction of LOOP, a lawsuit was instituted to stop the discharge of brine into the Gulf of Mexico. The brine was produced as a result of leaching of the underground oil storage cavities which are an integral part of LOOP's activities. During trial of the suit, the State court found that monitoring programs being conducted were more than sufficient to determine if the impact was harmful, or of lasting effect. As part of the evidence during the trial, it was shown that the results, as projected, were within a reasonable level of those which were predicted to occur. While brine is not crude oil, this example illustrates that environmental effects can be reasonably projected.

We will not say that LOOP is free of all problems. There have been oil spills, though none have been what we consider to be of a serious nature. Most spills occurred near the end of construction, when operation was on a trial basis. Since construction has been nearly completed and operational procedures tightened, the chances of spilling oil have been greatly reduced. LOOP reports all spills, even smaller than one pint. The largest spill which has occurred amounted to about 400 barrels of crude oil when two hoses ruptured. The controls designed into the system effectively prevented the discharge of any great amount of oil and LOOP's actions in this situation were more than adequate.

If environmental impacts from LOOP were detrimental to our State's resources, we believe that the monitoring programs would quickly indicate problems, and we would be able to immediately implement corrective measures. At this time no unexpected impacts have occurred to our coastal environment.

LOOP OILSPILL CONTINGENCY PLAN

An excellent Oil Spill Contingency Plan has been developed for this project. The Plan has received input from the Wildlife and Fisheries Department of Louisiana, the U.S. Fish and Wildlife Service, Louisiana State University's Center for Wetland Resources, the United States Coast Guard and the Offshore Terminal Authority. The Plan describes exactly what should be done for each of several types of spills, onshore and offshore. A map detailing and rating ecologically sensitive areas, covering nearly one-half the coastline of our State, has been prepared so that precious time will not be wasted deciding priorities if a major spill should ever occur.

In conjunction with the Eighth District Coast Guard and the Gulf Strike Team, LOOP has held oil spill drills as a method of training personnel. In fact, just such a drill was held in July, at which Mr. Webb, Assistant Executive Director, was an observer. Joint drills of this type held in 1981 and 1982 serve as an excellent vehicle for maintaining trained personnel both for government and private industry.

LOOP has had Texas A&M conduct its world-famous oil spill control school on location in Louisiana. The school is quite informative and serves to provide LOOP personnel with "hands-on" experience.

Utilizing self-owned and hired vessels, LOOP's ability to respond to an oil spill situation is greater than any other known along the Gulf Coast. A specially outfitted 75-foot converted shrimp trawler had been described as "one of the finest applications of equipment for offshore oil spill cleanup operations" by personnel of Oil and Hazardous Materials Simulated Environmental Test Tank (OMSETT) located in

Maryland. Besides the 75-foot converted shrimp trawler, LOOP has four other boats, under 26 feet long, dedicated to responding to oil spills. Also, LOOP has three large vessels, one 200 feet long and two 85 feet long, which are always available for responses to spill situations which may occur around the Marine Terminal. LOOP has over 27,000 feet of oil spill containment boom located in strategic locations. More than half of the boom is for offshore service and is kept at the Marine Terminal. In over two years' time, LOOP has not had to exercise the use of much of its equipment except for training missions. Minor spills have occurred but nothing environmentally threatening has happened.

Through our observations, we think that LOOP is continuously striving to acquire and employ the "best available technology" in order to meet its obligations to protect Louisiana's environment.

U.S. COAST GUARD SURVEILLANCE

While no incidents have occurred which have required the clean-up of a significant amount of oil, the cooperation between the U.S. Coast Guard and the Louisiana Offshore Terminal Authority has been excellent. We have been invited to, and have attended, exercises of the Regional Response Team. The RRT is a group of federal and state officials designated to deal with emergency situations involving hazardous materials. We are also regularly informed of Coast Guard activities of the Eighth Coast Guard District and the Gulf Strike Team.

LOTA OVERSIGHT

The Louisiana Offshore Terminal Authority is very much impressed with the reliability of design and construction information on which LOOP was built. We have had access throughout the project to all information and have, therefore, been in a position to know that LOOP has met or exceeded requirements which were established by both the state and the federal governments. LOOP's Quality Control Program was used to verify that equipment and construction which were specified were received. LOOP's Supervisor of Environmental Affairs is very cognizant of the need to protect our State's environment. A system of reporting incidents to all state and federal agencies involved in oil spills has been developed which ensures that no incident goes long without having the proper action taken to correct the problem.

A recent example that LOOP is living up to its responsibilities is shown by repairs which it has undertaken on one of its Single-Point Mooring Buoys. A slight sheen was noticed emanating from the buoy. Inspection revealed that seals which were supposed to last a lot longer might be the culprit. LOOP, without hesitation and at great expense, has taken action to remedy the deficiency. This type of action has been noted whenever a problem has occurred. All actions by LOOP have always been "above board." If a statement of fact is issued by LOOP, we can be certain of its reliability.

As stated earlier, the equipment and training which LOOP has placed in the hands of its employees gives them the ability to handle oil spill incidents of almost any size. Besides LOOP's "in-house" employees, a contractor has been hired to provide additional capability. Personnel of LOOP's oil spill clean-up contractor are involved in all training exercises and drills. Because of this interaction between the two, it is believed that, working as a team, any situation which might develop can be controlled and cleaned up without causing lasting environmental disruption.

CONCLUSION

We have carefully reviewed the provisions contained within S. 1546 and have found the proposed amendments to the Deepwater Port Act of 1974 consistent with requirements necessary to protect our State's environment. Because of the oversight which our agency, the Louisiana Offshore Terminal Authority, and the U.S. Coast Guard have over the day-to-day operations, and also because of LOOP's proven record as a good environmental citizen, we know that the maintenance and operations of LOOP will continue to be exemplary. Therefore, we support the legislation contained in S. 1546 amending the Deepwater Port Act of 1974.

Senator STEVENS. Now I turn to Mr. William B. Read, the president of LOOP.

STATEMENT OF WILLIAM B. READ, PRESIDENT, LOUISIANA OFFSHORE OIL PORT, INC., ACCOMPANIED BY THOMAS P. JAMES, GENERAL COUNSEL; AND GORDON ARBUCKLE, WASHINGTON LEGAL REPRESENTATIVE

Mr. READ. Thank you, Mr. Chairman.

My name is Bill Read, and I am president of LOOP. With me here today are Tom James, our general counsel of LOOP, and Gordon Arbuckle who is our Washington counsel.

I have submitted my written remarks, I ask you to include those in the record, and I will just cover the three main points in a brief summary.

Senator STEVENS. Thank you, sir.

Mr. READ. When the Deepwater Port Act was passed in 1974, the United States was importing about 3.5 million barrels of crude oil a day. We expected that that would go up to about 12 million barrels a day, and just the contrary has happened.

When we started construction, we were importing in the United States about 6 million barrels a day, and now that level is down to about 3.5 million. Because of this shortfall in anticipated imports, our revenues are way below what our break-even level of throughput is.

Consequently we, last year, suffered about a $40 million loss on our operations, not including depreciation. Unless we can compete more aggressively and obtain additional business, or reduce our operating costs, we will continue to have losses. We think that the bill as reported out in the House will be very adequate in helping us to achieve our objectives. We fully support that version that was reported out in the House.

When we started our operations, it was thought that we would have a monopoly position and, therefore, would need to be highly regulated, but experience has shown that nothing could be further from the truth. The LOOP is highly regulated like a monopoly, but we are subject to fierce and unregulated competition in the marketplace. We would like to be in a position to adjust our rates constantly to meet our competition, but because of the FERC tariff filing requirements, it makes it impossible for us to do this.

Under the present act, LOOP is prohibited from serving tankers unless a bilateral agreement is in effect with the United States and that vessel's flag country. The requirements were based on international law when the bill was passed and, of course, developments since then have made this unnecessary. We have turned away 16 vessels that we would otherwise have been able to serve if we had not been required to have this bilateral agreement.

One of the major unnecessary costs, in our opinion, in using LOOP is the 2-cent-per-barrel contribution to the liability fund. Right now this amounts to about 10 percent of our low tariff. It would have an effect, in our opinion, of discrimination against LOOP in favor of lightering, lightening, or smaller vessels coming up the Mississippi River. We, therefore, are hoping that the fee collection would be suspended.

In essence, LOOP is a major asset to the United States in reducing environmental risks and increasing the efficiency of importing foreign crude oil from distant sources. Our ability to maintain this

asset may depend upon the enactment of S. 1546. We appreciate the urgency that you have been able to give us in getting this bill passed, and we hope that we can get it passed this year.

Senator STEVENS. We will do everything we can to cooperate with you in that regard.

Why don't you tell us a little bit about the history of oilspills that you have had at LOOP. How many have you had, and how serious have they been?

Mr. READ. In the beginning we had small oilspills, 1 gallon, a half gallon, and so forth, until we got some of the bugs worked out of the system. Since the middle of this year, we have had very little in the way of oilspills reported to the Coast Guard. We have Coast Guard people on the platform. They are monitoring our activities on a daily basis.

The one major spill that we have had was a ship breaking out of the mooring in bad weather. We broke both of the hoses, and spilled 400 barrels of oil. I was out within 3 or 4 hours, when this occurred, and I was not able to see enough oil to be able to go out and clean up. The seas were so high that the oil was dissipated within a 2-mile stretch from the platform. That is the worst oilspill we have had and our most serious problem, and it did not cause any major environmental problems.

Senator STEVENS. How many vessels has LOOP turned away because of the bilateral requirement?

Mr. READ. We have a record that we turned away 16 ships that were nominated or tentatively nominated to unload at LOOP.

Senator STEVENS. What kind of revenue does that represent?

Mr. READ. If you count the number of barrels that those ships contained against our tariff, it would amount to about $4 million worth of revenue.

Senator STEVENS. How significant is the 2-cent-per-barrel throughput fee?

Mr. READ. It is 10 percent of our lower tariff, so it is a significant amount of the revenue that a shipper would have to pay to utilize loop.

Senator STEVENS. How does that compare to your operating losses?

Mr. READ. I would have to go back and take a look at the actual number of barrels over a specific period of time, but I would be happy to get that information for you. It wouldn't cover $40 million worth of operating losses.

Senator STEVENS. It is really not something that is going to erase the operating loss.

Mr. READ. No; it definitely will not, but it will help us. It could be $4 million, and if we got all of it in 1 year, it would be 10 percent of our losses.

Senator STEVENS. We will await with interest the action of the House on the bill, and we will do our best to cooperate with the Senators from Louisiana to move the bill as soon as it comes over.

Again, I want to apologize for the confusion here this afternoon. I think it is imperative that we have this record. I am pleased to hear the report about the oilspills that there has been nothing of major significance. The spill that you had during the storm is the worst that you have had, right?

Mr. READ. Yes; and that was by far the biggest accident that we have had since the port started up. We have taken measures to see that that doesn't happen again.

Senator STEVENS. We will keep the record open. There may be some questions that the staff will want to submit to your organization and to the Department of Transportation. I want those questions to go only if they can be answered in a timely way that will not interfere with action on the House bill when it comes over to the Senate.

It is my hope that we will be able to report, or at least clear, this bill so that the House bill could be handled on the floor when it comes to the Senate. The intent of having this hearing is to expedite this bill.

Again, I would urge those of you who have any concerns about the bill to contact the House. It will be my recommendation that we take the House bill when it comes to us because of time considerations.

Thank you all very much.

[The statement follows:]

STATEMENT OF WILLIAM B. READ, PRESIDENT OF LOOP, INC.

I am William B. Read, President of LOOP Inc., the only deepwater port constructed and operating under the Deepwater Port Act of 1974. With me are Thomas P. James, General Counsel of LOOP, and Gordon Arbuckle our Washington Legal Representative.

S. 1546 and a companion bill in the House, H.R. 2353, were identical as introduced. As you know, on September 22, 1983, the House Committee on Merchant Marine and Fisheries reported unanimously H.R. 2353 as amended by its Subcommittee on Merchant Marine. The House Committee's amendments accomplish the same objectives from LOOP's point of view that are contained in S. 1546. Although the language in the two bills is now slightly different, I want to emphasize that the objectives are the same.

LOOP supports S. 1546, the proposed amendments to the Deepwater Port Act. It does so for three main reasons. First, the Bill will replace a restrictive rate-making process with the free market, allowing us to respond more effectively to the substantial tanker competition LOOP faces. Second, the Bill will place deepwater ports on a more competitive footing with coastal ports by eliminating discriminatory provisions with regard to financial responsibility for oil spill liability and so encourage the use of the safer deepwater ports. Third, the Bill will streamline deepwater port regulation, allowing deepwater ports to compete more effectively.

First, a word of explanation about LOOP Inc., which owns and operates the Louisiana Offshore Oil Port (LOOP). LOOP's offshore facilities are located 19 miles off the coast of Louisiana. The deepwater port enables tankers to unload safely beyond the congestion of coastal waterways and ports. The cargoes are then delivered by pipeline to an underground storage terminal located 28 miles inland. From that terminal, other pipelines provide connections to refineries located along the lower Mississippi River; at Lake Charles, Louisiana and Port Arthur, Texas; and, by a connection to Capline, to refineries located in the midwest.

LOOP began operations in December 1981, and since that time throughout has averaged 301,000 barrels per day, and in its best month, 585,000 barrels per day. These levels are well below LOOP's cash breakeven point of 700,000 barrels per day, and far below LOOP's designed operational capacity of 1,400,000 barrels per day. As a result of these low throughputs, LOOP suffered operating losses, without including depreciation expense, of over $40 million in 1982. These operating losses seem likely to continue unless LOOP can be put in a position to compete more effectively.

I. RATE REGULATION

One of LOOP's primary concerns about the present Deepwater Port Act is that rates are subject to elaborate regulation by the Federal Energy Regulatory Commission (FERC), even though as a practical matter, the rates which a deepwater port can charge are set by competition. The rates set by such competition are substan-

tially below the maximum rates chargeable under FERC rate-making principles. Thus LOOP has the worst of both worlds—all the burdens and delays of setting its rates through FERC, and all the demands of functioning in a highly competitive market for crude oil transportation. This combination is threatening the economic viability of LOOP while serving absolutely no public interest.

LOOP faces substantial direct competition from unregulated tankers and barges unloading oil at other coastal port facilities. In addition to the use of LOOP the usual methods of landing crude oil in the Gulf include direct shipment, lightering, lightening and transshipment. Direct shipment involves small tankers which can dock directly at inland ports, refinery terminals, or the Capline terminal for further pipeline delivery into the midwest. Lightering involves the transfer of cargoes at sea from very large tankers (VLCCs) to barges or smaller tankers for direct delivery. Lightening is essentially a partial lightering, whereby enough oil is taken off the tanker to reduce its draft to the point it can proceed upriver. Transshipment involves delivery by VLCCs to ports in the Caribbean and transferring these cargoes to smaller tankers which may proceed directly to inland ports. In essence, LOOP competes with all the unregulated barge and tanker movements for the last 100 miles of their voyage up the Mississippi River, the Calcasieu River, or the Sabine River.

The transshipment terminals, and barge and tanker operators with whom LOOP competes, are unregulated. They do not publish tariffs. They are sensitive to competition and can adjust their rates on a contract by contract, charter by charter, or tow by tow basis. While keeping their own prices confidential and pricing incrementally, these operators have an added advantage in that they are able to ascertain what they can charge by obtaining copies of the published LOOP rates with which they compete.

The waterborne competition that LOOP faces varies in intensity according to the source of the crude oil. LOOP is designed to handle VLCCs which are economical to use only on long haul movements, such as from the North Sea, Persian Gulf or North and West Africa. On shorter haul movements, such as from Mexico, Panama or Venezuela, the most economical means of delivery is by a smaller tanker which can proceed directly to inland ports. LOOP has handled some short-haul cargoes, but given current depressed tanker rates, there is probably no tariff which LOOP can economically charge which would allow it to compete, except in special circumstances, on such short haul movements. The only market in which LOOP can hope to compete is the crude oil market from long haul sources. In that market LOOP must meet or better the rates of the unregulated barges, tankers and Caribbean transshipment terminals.

Competition for these distant cargoes has intensified because the United States now receives a smaller portion of its crude oil from distant sources and a greater portion from nearby sources, such as Mexico or the North Sea. George S. Wolbert, Jr. recognized this in his book "U.S. Oil Pipe Lines," American Petroleum Institute, 1979 (p. 151): "All that it will take for it [LOOP] to go under will be large scale importation of crude from Mexico where VLCCs will not be a factor as they are in liftings from the Persian (Arabian) Gulf. . . ."

LOOP also faces substantial indirect competition. Foreign crude supplies are generally used to fulfill the shortfall of domestic production to meet United States' refining needs. To the extent that domestic production increases or United States' refining needs decrease, demand for foreign crude oil will decrease. Declining United States' refinery utilization has reduced the imports of crude oil from over 6.6 million barrels per day in 1977 to 3.3 million barrels per day in 1982.

Foreign refiners also compete indirectly with LOOP. Several oil-producing nations have expanded their refining capabilities and others have announced plans to do so. LOOP cannot handle refined product imports, so its market is further reduced by increases in such imports.

LOOP has no monopoly power. Unlike public utilities, LOOP has no captive market for its service. There are no significant barriers to entry for any barge or tanker company to compete with LOOP in the landing of crude oil.

LOOP's operating history bears out this point. LOOP's average throughout has been 301,000 barrels per day, less than 20 percent of operational capacity. During the same time, imports by refineries which could be served by LOOP were in excess of 1,200,000 barrels per day. Obviously, LOOP has not dominated this crude oil transportation market.

For these reasons—substantial direct and indirect competition and lack of monopoly power—LOOP believes that deregulation of deepwater port rates is in the public interest. The conviction that the deregulation of oil pipelines should be considered by Congress was strongly expressed by FERC in its recent decision on the *Williams*

case stressing that present rate regulations are cumbersome, ineffective and not in the public interest where market competitive forces can be used. We strongly support section 5 of the Bill. The same objectives would be achieved by section 3 of H.R. 2353 as reported by the Merchant Marine Committee.

II. DEEPWATER PORT LIABILITY FUND

Section 6 of S. 1546 would dissolve the Deepwater Port Liability Fund and substitute the revolving fund established under Section 311 of the Clean Water Act. LOOP is currently covered by both funds, unlike onshore ports. This fee increased the expense of using deepwater ports and so discourages tankers from using them, even though deepwater ports are far less likely to have oil spills than onshore ports. The amendment would place deepwater ports on an equal footing with onshore ports, and so eliminate the senseless preference for riskier onshore ports.

H.R. 2353 takes a different approach to the problem we have with the fee collection that goes into the Fund. As amended, H.R. 2353 suspends collection of the fee by reducing the size of the Fund and capping it at an amount somewhat lower than is now contained in the Fund. We support this approach should the Committee choose it.

The bill does not change the stringent environmental and safety requirements a deepwater port must meet, nor does it change the licensee's liability under the Deepwater Port Act for oil spill cleanup costs and damages. Under current law, deepwater ports are liable without fault for a maximum of $50 million per spill, while onshore ports are liable without fault for a maximum of between $8 million and $50 million, depending on the size of the port facility.

Deepwater ports also must make a showing of financial responsibility (insurance coverage and self-insurance) as established by the Secretary, and the Secretary has set this level at $150 million in LOOP's case. Onshore port facilities face no equivalent requirement under the Clean Water Act. Again we stress that this Bill would not alter these more stringent environmental liability and insurance requirements which deepwater ports must meet.

Furthermore it should be emphasized that the Deepwater Port Liability Fund is an account of last resort. Primary liability and responsibility for cleanup rests on LOOP and the owners of the vessels. They come first, ahead of any Federal cleanup fund. LOOP's liability for oil spills and its responsibility for cleanup costs and damages are insured. The policy carried by LOOP provides coverage of $150 million per occurrence ($5 million deductible) and $225 million annual aggregate protection. This protection may be reinstated should the maximum aggregate be fully used in less than one year. This insurance was required by the Department of Transportation in 1980 as part of LOOP's demonstration of financial responsibility to meet the liabilities imposed by the Deepwater Port Act for damages and cleanup cost resulting from a discharge of oil.

To date, the Deepwater Port Liability Fund has not been called upon for oil spill cleanup at LOOP, nor has LOOP made a claim against its oil spill insurance.

The Deepwater Port Liability Fund is authorized at $100 million and is financed through a two-cent-per-barrel fee levied on the owner of oil unloaded at a deepwater port. Although the Fund is authorized at a level of $100 million, it only contains about $4.0 million and, at the current pace of fee collections, will take more than 25 years to reach the $100 million level authorized.

When the Deepwater Port Act passed in 1974, we were told not to worry about discriminatory impact because there would soon be an oil Super Fund act which would put all oil ports on an equal footing. It is now nearly ten years later. We are still the only oil port with a special contingency fund. We are losing money and still putting almost 10 percent of our gross revenue per barrel into a special fund which is highly unlikely to ever pay out a penny to anyone. This is an unfair and counterproductive situation and clearly needs changing.

Shippers view the two-cent-per-barrel fee as a significant impediment to use of the deepwater port, adding almost 10 percent to the cost of that service. This fee thus encourages the use of cheaper but riskier onshore ports.

Under these circumstances, suspension of collections for the Deepwater Port Liability Fund would seem appropriate, as it would remove an unjustified preference for riskier onshore ports and still provide ample resources in the unlikely event of an oil spill cleanup which LOOP and its insurers could not handle.

III. STREAMLINING AMENDMENTS

On the basis of LOOP's experience, I would like to comment briefly on other changes which could reduce unnecessary regulatory burdens and allow us to compete more effectively.

Under the present Deepwater Port Act, the United States must conclude a separate bilateral agreement with the flag state of every vessel that wishes to use LOOP. This requirement has forced us to turn away several tankers. Depending on tanker size, loss of revenues resulting from inability to accept a cargo from one vessel can range up to $750,000. This impediment obviously makes it more difficult for us to compete, and, now is unnecessary under international law since the United States has recently asserted jurisdiction over an Exclusive Economic Zone extending 200 miles to sea. We support section 7 of the bill, which would eliminate this unnecessary impediment.

Section 1 simplifies the procedures for amending and transferring licenses, and would make minor adjustments far easier to make. This would permit us and the Coast Guard to adjust more easily to changed circumstances, without repeating the lengthy 18-month process for obtaining our initial license.

Section 2 assures that licensees are treated equally, and that the Department of Transportation imposes uniform license conditions insofar as is practical. This is simply an assurance of fundamental fairness, one that would allow LOOP to compete on the same terms as any other deepwater port constructed in the Gulf of Mexico.

Section 3 changes the license term to coincide with the useful life of the deepwater port. Under current law, the term is twenty years, with a preferential right to renew for an indefinite number of ten-year terms. This change would reduce financing uncertainties for licensees and relieve the Secretary and the licensee of the pointless and costly exercise of relicensing the facility at ten-year intervals.

Section 4 adds a regulatory review procedure whereby a licensee can petition the Secretary to rescind or amend unnecessary rules or license conditions, and to review rules or license conditions to incorporate more cost-effective means of achieving the Act's objectives. This section will permit an ongoing revision of regulatory requirements to take into account operation experience and improvements in technology.

The substance of Sections 1, 2, 3, and 4 of S. 1546 is incorporated in and satisfactorily dealt with in Section 2 of H.R. 2353 as amended.

CONCLUSION

In conclusion I would like to point out that the Deepwater Port is a major asset to the United States in reducing the environmental risks and increasing the efficiency of importing foreign crude oil from distant sources. Our ability to maintain this asset over the near term may depend in large part on the removal of the competitive impediments referred to in my remarks. This Bill, as introduced, goes a long way in this direction. We support its prompt passage.

I am happy to answer any questions the Committee might have.

[The following information was subsequently received for the record:]

LOOP, INC.,
New Orleans, La., October 28, 1983.

Senator TED STEVENS,
Chairman, Merchant Marine Subcommittee,
Senate Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR SENATOR STEVENS: At yesterday's hearing on the Deepwater Port Act Amendments, I was handed a list of questions. LOOP's answers to these questions follow:

Question 1. Please estimate the amount of revenue you have lost as a result of turning away foreign tankers whose flag nations have not entered into bilateral agreements with the United States under section 19 of the Deepwater Port Act? State the details upon which you base your estimate, including the size, number, and flag state of any vessels rejected.

Answer. A list of the vessels which have indicated an intention to ship through the Deepwater Port but have had to be turned away because of the absence of the necessary bilateral agreement is as follows:

Country	Ship	Size (MDWT)	Date
Iraq	(Marathon Oil Co. nomination)	?	Spring 1982.
Saudi Arabia	*Christina*	84	April 1982.
Saudi Arabia	*Sipca Damman*	257	May 1982.
Mexico	*Aztec Aguila*	227	September 1982 and August 1983.
Singapore	*Hellespoint Pride*	88	October 1982.
Singapore	*Industrial Prosperity*	88	October 1982.
Singapore	*Saint Vincent*	90	October 1982.
Finland	*Fanny*	100	October 1982.
Spain	*Santander*	95	November 1982.
Singapore	*Viking Falcon*	79	November 1982.
Singapore	*Prosperity Queen*	85	March 1983.
Singapore	*Golden Gate Sun*	81	March 1983.
Singapore	*Manhattan Prince*	86	Spring 1983.
Cyprus	*Kypros*	270	August 1983.
India	(Owner—Great Eastern Shipping Co.)	?	August 1983.

By multiplying the tonnage of these vessels times the tariff in effect on the relevant date, LOOP has determined that the revenue which would have been generated from transportation of these cargoes would have exceeded $4 million. Further, it is likely that some of the listed vessels would have used LOOP on multiple voyages, and that other vessels from which we received no specific inquiry elected not to use LOOP because they knew they were ineligible. Accordingly, the $4 million figure should not be viewed as fully reflective of total revenue loss associated with the bilateral agreements. LOOP believes that the actual revenue losses were substantially larger.

Question 2. You have indicated support for removing the bilateral agreement requirement. The Department of Transportation, on the other hand, opposes such a change because of possible enforcement problems. In your view what enforcement powers should the United States possess to keep order in the deepwater port? As part of your response, please explain how LOOP differs from a port on land in terms of opportunities for criminal activity by personnel from a foreign vessel using the port.

Answer. In respect to U.S. residents and citizens and all personnel on the Port structure itself, the laws of the United States should be fully applicable as if the Port were an area of exlusive federal jurisdiction located within a state. This jurisiction is asserted in Sec. 19(a)(1) of the present Deepwater Port Act (33 U.S.C. 1518) and is clearly recognized under customary internatinal law. [See e.g. Convention on Law of the Sea (not in effect) Article 60 (2).]

With respect to foreign flag vessels operating or moored in the Port's safety zone, it is not necessary or even desirable to have activities on board such vessels subject to all of the requirements, penalties and liabilities which pertain under U.S. law. All that is required or desirable is that U.S. authorities have the power to take any action which may be necessary to ensure the safety of navigation in the safety zone and the safety of LOOP's facility. Again, the appropriate jurisdiction is asserted in Section 19(a)(1) which makes U.S. laws applicable to "activities * * * potentially interfering with the use or operation" of LOOP's Port. This assertion of jurisdiction is also recognized under customary international law as evidenced by Article 60(4) of the Convention of Law of the Sea (not in effect) which provides that

The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

In evaluating the nature of jurisdiction required for a foreign flag vessel in the safety zone, it must be kept in mind that such vessel and its personnel are 21 miles off the U.S. coast and one and one-half miles (8,000 feet) away from LOOP's platform. Short of mutiny, an insurrection or sabotage on board such vessel, or an intentional effort to damage the Port or its personnel, it is difficult to imagine how criminal activity on board the vessel could affect the Port's operation or any other legitimate U.S. interest. In the event of such insurrection or intentional endangerment, of course, U.S. authority to take all appropriate action to maintain order in the safety zone and protect the Port would seem to be beyond question.

Question 3. If you believe it is unnecessary to make all U.S. laws as well as the law of adjacent state applicable to foreign flag vessels and their personnel, how would you change section 19 to provide minimum protection for the United States?

Answer. As noted above, we believe that Section 19(a)(1) correctly states the extent to which U.S. law should apply and does apply to foreign flag vessels and their personnel. Subsection 19(c)(1), in our opinion, is unnecessary and could simply be deleted. We have no difficulty, however, with the amendment to subsection 19(c) contained in Section 5 of H.R. 2353, as reported on September 22, 1983 by the House Merchant Marine Committee, and would support that provision without change.

Question 4. In your testimony, you have indicated general support for the revised bill (H.R. 2353) reported recently by the House Merchant Marine and Fisheries Committee. Are there any provisions of that revised bill that you have problems with? If so, please state your reasons and submit suggested statutory language.

Answer. We have no problems with any provision of H.R. 2353 as reported.

Question 5. If this Committee were to change section 19 in the way it would be changed by the House reported version of H.R. 2353, do you see any problem with adding the requirement that the owner or operator of each such foreign vessel designate an agent for service of process?

Answer. We do not believe there is a need for such a requirement since all vessels calling at LOOP would be required to have designated an agent and posted evidence of financial responsibility under Section 311 of the Federal Water Pollution Control Act. In any case, LOOP will continue its practice of requiring designation of an agent for service of process.

Question 6. The Department of Transportation objects to allowing a transferee to take over a deepwater port license without an antitrust review in accordance with section 4(c)(7) and a determination by the Secretary under Section 4(c)(1) and (c)(2) regarding financial responsibility and ability and intent to comply with applicable laws and license conditions. Do you object to requiring that these three provisions be satisfied in the case of a transferee of a license? If so, please state your reasons.

Answer. It appears that the Department has failed to recognize the significance of the requirement in Section 2(c) of the House bill that a transfer be "consistent with the findings made at the time the license was issued." This means that unless the Department can make the same findings in respect to the transferee's financial responsibility and ability and intent to comply that it made in respect to the original licensee, it should not consent to the transfer. In respect to the antitrust review, we note that Section 2(h) of H.R. 2353 would provide the Attorney General and FTC with copies of all petitions for transfer and an opportunity to comment or conduct an antitrust review if they deem it appropriate to do so. The House bill correctly recognizes that a mandatory full-scale antitrust review may not be appropriate for all transfers and properly provides the cognizant agencies with the flexibility to exercise their judgment as to whether a review is required.

Let me again express my appreciation for your interest in this matter. Feel free to call on us should you have any further questions.

Yours very truly,

WILLIAM B. READ,
President.

[Whereupon, at 3:25 p.m., the subcommittee adjourned.]

○